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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,771	11/03/2000	Michael F. Marlin		4378

7590 06/07/2006

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EXAMINER
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MILLER, BENA B

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/704,771	<b>Applicant(s)</b> MARLIN, MICHAEL F.	
	<b>Examiner</b> Bena Miller	<b>Art Unit</b> 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*Bena B. Miller*

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-24 and 27 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Brannon (US Patent 4,830,244).

Regarding claims 22 and 27, Brannon teaches in the figures most of the elements of the claimed invention, including a helical section (26), a handle being integral with said helical section (16), the handle comprising a straight section (fig.1). Regarding claim 22 and 23, Brannon fails to teach a plastic wire and the helical section's length ranging from about two and three quarters inches to about six inches and the handle length ranging from about 3 ½ inches to about 6 ½ inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the helical section's length of Brannon ranging from about two and three quarters inches to about six inches and the handle's length ranging from about 3 ½ inches to about 6 ½ inches since it known in the art to have the helical section and handle between the claimed range for the purpose of grasping the end of the handle. Further, it would have been obvious to one having ordinary skill in the art at the time the

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invention was made to having the wire plastic, since it has been held to be within general skill of worker in the art to select known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Regarding claim 24, Brannon fails to teach the helical section's diameter ranging from about  $\frac{1}{4}$  inch to about 1 inch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the helical section's diameter of Brannon ranging from about  $\frac{1}{4}$  inch to about 1 inch since it known in the art to have the helical section for the purpose of providing a different size for usage by various sized individuals.

Claim 25 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Brannon in view of Bidwell.

Brannon teaches in the figures most of the elements of the claimed invention, as noted above. However, Brannon fails to teach words printed along the length of the coils. Bidwell teaches a spring member (fig.4) having a word ("graphic") printed thereon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply printed words as taught by Bidwell in the helical section of Brannon for the purpose of providing excitement when using the toy.

Claim 26 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Brannon in view of Molenaar.

Brannon teaches in the figures most of the elements of the claimed invention, as noted above. However, Brannon fails to teach a colored coiled toy. Molenaar teaches in figures 1-7 a coil spring toy (12) having a line in a configuration of a figure 42 made of

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paint, ink or colored plastic material secured or applied to the toy (col. 5, par. 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply color as taught by Molenaar to the coiled toy of Brannon for the purpose of providing interest to the person when using the toy (col. 6, lines 13-16).

***Response to Arguments***

Applicant's arguments filed 06/21/06 have been fully considered but they are not persuasive. In response to Applicant's remarks that Brannon fail to teach a handle that is part of a single, unitary "plastic" wire, the Examiner disagrees. The Examiner has clearly set forth in the above rejection a handle [see above]. It should be noted that the rod can be removed from holder 20 (col. 3, lines 60-62) which would provide a handle with an one unitary structure.

In response to Applicant's remarks to the plastic wire, Applicant's attention is directed to the previous Office Action.

In response to Applicant's remarks to the limitation "consisting of", the rod of Brannon can be removed as shown in Figure 3. In this instance, rod 16 is free from holder. It should be noted that rod of Brannon is an individual piece that functions with holder 20. Therefore, the independent rod 16 (Note again, that rod is removed from and is free from holder 20—col. 3, lines 60-62) "consists of" the claimed elements as described above.

For the reasons set for above, this Office Action is made final.

***Conclusion***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114.. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

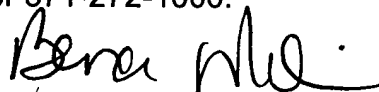
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Bena Miller  
Primary Examiner  
Art Unit 3725

bbm  
May 22, 2006